

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

SELF HELP, INC.

Employer

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 888, AFL-CIO

Petitioner

Case 1-RC-21830

DECISION AND DIRECTION OF ELECTION¹

The Union is seeking to represent a unit consisting of the employees working in the Employer's Head Start program.² This case concerns the supervisory status of

¹ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

² The Union seeks to represent a bargaining unit composed of all full-time and part-time lead teachers and lead teacher substitutes, teachers and teacher substitutes, float teachers, bus drivers and bus driver substitutes, van drivers and van driver substitutes, bus monitors and bus monitor substitutes, family advocates and family advocate substitutes, behavioral specialists and behavioral specialist substitutes, head cooks, second cooks, food service workers, kitchen aides, food service van drivers and their substitutes, receptionists, data entry/receptionist, data processing/office assistants, health specialists, transportation assistants, nutrition specialists, transition literacy specialists, and maintenance workers employed by the Employer, but excluding confidential employees, managers, guards, and supervisors as defined in the Act.

approximately 38 lead teachers employed by the Employer in its Head Start classrooms for preschool children. The Employer asserts that the lead teachers are the statutory supervisors of the teachers in their classrooms and should, therefore, be excluded from the unit sought by the Union. The Union contends that the lead teachers are nonsupervisory employees who should be included in the unit. I find, in agreement with the Union, that the lead teachers are nonsupervisory employees and, therefore, I shall include them in the unit found appropriate.

FACTS:

Background

Self Help is an anti-poverty agency located in Avon, Massachusetts that provides various services, including a federally-funded Head Start program, to low-income citizens in 30 cities and towns in southeastern Massachusetts. The main office for the Head Start program is in Brockton, Massachusetts. The program operates preschool classrooms at 10 sites within its Employer's Massachusetts service area, including Brockton, which has two sites, and Norton, Whitman, Attleboro, Middleboro, Rockland, Bridgewater, Norwood, and Stoughton.

Jonathon Carlson is the Executive Director of Self Help. Head Start Director Patricia Foley reports to Carlson. Deputy Director for Family Services Nancy Sullivan reports to Foley. Education Managers Mary Pichi and Amy Ingerni report to Sullivan. Approximately seven education specialists, also referred to as consultant resource teachers (CRTs), report to the education managers.³ The lead teachers at issue in this case report to the education specialists.⁴

The Employer's Head Start program operates 38 classrooms at the 10 sites listed above and serves about 700 children ages three to five-years old. Each site has anywhere from one to thirteen classrooms, with up to twenty children per classroom. Twenty-eight of the classrooms, called Head Start classrooms, operate for four hours a day. Each of these classrooms is staffed by a lead teacher and a teacher who work from about 7:30

At the hearing, the Union withdrew its assertion that data processing/office assistant Helen Hunter should be excluded from the unit as a confidential employee. Accordingly, she shall be included in the unit.

³ It appears that some of the education specialists service more than one location.

⁴ The Head Start program also employs various other managers and supervisors who are not in the chain of command that includes lead teachers. The parties have stipulated, and I find, that the following employees should be excluded from the unit as managers and/or supervisors: the executive director, directors, deputy directors, office manager, family service managers, education managers, family service parent involvement managers, senior data processing specialist, health manager, transportation specialist, food service specialist, education specialists, mental health manager, and clinical supervisor.

a.m. to 2 p.m. The remaining 10 classrooms, called full-day classrooms, operate from 7 a.m. to 6 p.m. These classrooms are staffed by a lead teacher who works from 8 a.m. to 4 p.m., a morning teacher who arrives at 7 a.m., and an afternoon teacher who stays until 6 p.m. The Head Start program runs from September to the end of May or early June each academic year.⁵

The daily routine for the lead teachers⁶ and teachers includes setting up their classroom; taking attendance; serving breakfast to the children; taking the children to play on the playground; conducting small group activities and lessons, including cognitive lessons, story time, music, art, science, dramatic play, and block play; serving lunch; and helping the children get on the bus to go home. The teachers and lead teachers complete observation sheets with respect to the childrens' skills and issues. The lead teachers and/or teachers conduct three home visits per year for each child. When teachers conduct home visits without their lead teachers, the lead teachers proofread their reports.

Lead teachers are responsible for encouraging the growth of the teachers as professionals, but they have the final say regarding what goes on in their classroom. Lead teachers work collaboratively with their teachers to design and implement the curriculum for their classrooms, although they are responsible for the curriculum. The lead teachers are provided with various regulations and guidelines from Head Start, including a National Head Start Step Teachers' Manual, and documents called "The Creative Curriculum," and Head Start "Frameworks," with which they must comply. These guidelines cover matters such as curriculum development, child development, and certain requirements of the Head Start program with respect to matters such as parent involvement, diagnostic screenings of the children, immunizations, and home visits. The lead teachers are required to complete weekly plans in conformance with the Head Start goals and Creative Curriculum, which they submit to their education specialists. The education specialists observe the lead teachers and teachers in the classroom and ensure that they are meeting the Head Start guidelines.

Authority to Evaluate

The evaluation process

Lead teachers are responsible for completing written annual evaluations for the teachers in their classrooms. Throughout the school year, the lead teachers meet with the teachers in their classrooms on a monthly basis to complete a log regarding the teachers' progress. Every other month, the lead teachers note a goal for their teachers in the log,

⁵ Head Start runs only a small number of classes during the summer months. Most of the teachers are laid off at the end of the academic year, and the managers evaluate whether they will be asked to return in September.

⁶ The parties have stipulated, and I find, that all of the lead teachers have the same duties and/or authority.

and in the alternate months they note an observation. Goals may include, for example, matters relating to classroom practice or matters such as absenteeism. The lead teachers sign the log in a space for “supervisor.” The education specialists see the logs continuously and meet with the lead teachers each month to discuss how the teacher and lead teacher in each classroom are doing as a team.

At the end of every school year, the lead teachers prepare a written evaluation of their teachers, based on the observations and goals noted throughout the year on the log.⁷ Lead teachers also complete a similar evaluation of new teachers after their first 90 days of employment. On the first page of the form, the lead teachers rate the teachers as “excellent,” “good,” “satisfactory,” or “needs improvement” with respect to general criteria such as attendance, punctuality, attitude, work habits, and the like.⁸ In another section of the form, the lead teachers rate the teachers on a scale from one to five, with five being the highest rating, with respect to each of the duties listed in their job description,⁹ as well as any additional duties they perform that are not listed in their job description. The lead teachers then add up the total points for this section and divide by the number of responsibilities rated to arrive at an overall performance score. There is no place on the form for the lead teacher to recommend discipline, but the lead teacher may check a box at the end of the evaluation to indicate “permanent employee” or “extended probationary period” and the date to which the probationary period is extended. The logs completed throughout the year are attached to and become part of the teachers’ annual evaluations.

Sullivan testified that the lead teachers give their evaluations to the education specialists. She testified that sometimes the evaluation is final when given to the education specialist.¹⁰ Sometimes the lead teacher seeks guidance from the education specialist with respect to the evaluation. Since education specialists visit each classroom at least once a month for an informal observation, education specialists may form their own opinion regarding a teacher’s performance. To Sullivan’s knowledge, however, education specialists have not changed evaluations written by lead teachers. She testified that, if an education specialist and a lead teacher disagree about an evaluation, they would discuss the matter with their education manager. She gave no examples where that has occurred.

⁷ Teachers, like all staff at Self Help, Inc., also complete a self-evaluation form as part of the process.

⁸ No numerical scores are assigned to the ratings in this section.

⁹ For example, the lead teacher rates the teacher with respect to the duty, “Assists the lead teacher in observing, assessing and evaluating every child.”

¹⁰ It is unclear from Sullivan’s testimony whether lead teachers give the evaluations to the education specialists for review before they present them to the teachers or whether they give them to the education specialists only afterward.

Lead teacher Geraldine Amado testified that her education specialist must approve the evaluation she has prepared before she discusses it with the teacher. Lead teacher Amy Rybak testified that her education specialist has called her in to ask why she chose to give a particular rating that the education specialist thought was too high. The lead teacher encouraged Rybak to change the rating. The record does not reveal whether Rybak thereafter changed the rating or whether this meeting with the education specialist occurred before or after Rybak had given the evaluation to the teacher.

Once the evaluations are complete, the lead teachers meet with the teachers to discuss their evaluation. The lead teachers may call in their education specialist to participate, but Sullivan testified this does not happen often.

Effect of the evaluations on employment status

Sullivan testified that the evaluations completed by the lead teachers may be used by the education specialists as a basis for disciplining teachers and/or as a basis for determining which teachers to cut on those occasions when Self Help has had to reduce the number of teachers in the Head Start program for financial reasons.¹¹ The only examples of such discipline that she could recall involved teachers “D.P.” and “C.F.,” whom she testified were not recalled as teachers for the following school year because their lead teachers reported in their annual evaluations that their attendance had been unsatisfactory. Sullivan testified that the two teachers would have been recalled to their jobs but for their lead teachers’ assessment that they each had an attendance problem. She testified, however, that Self Help could discipline employees over an issue such as attendance apart from their evaluation, because it is clear-cut.

Self Help submitted into evidence the April 2002 evaluation of teacher “D.P.” by lead teacher Monna Bari, which included a log in which Bari made notations about D.P.’s attendance/punctuality problems in December 2001 and February 2002. Bari also noted that, in April 2002, D.P., Bari, an education specialist, and an education manager had a team meeting about absenteeism. Bari did not complete the rating of D.P. for attendance on the annual evaluation form, nor did she check either the box for permanent status or extended probation. No one with personal knowledge of the events leading up to D.P.’s termination testified at the hearing.¹²

¹¹ Conversely, Self Help appeared to assert at the hearing that lead teachers play a role in determining which teachers shall be recalled. In this regard, Self Help submitted into evidence a “Change of Status” form indicating that in September 2002 teacher Mary Mastrangelo was returned to her teacher position from a layoff. The form was signed by lead teacher Joyce Green but also by Head Start Director Foley, who must approve all such actions, and by Executive Director Carlson. However, there was no testimony regarding the role of Green in the recall of this teacher, and Self Help did not rely on this incident in its post-hearing brief.

¹² Bari is no longer employed by Self Help. A “Change of Status” form entered into evidence indicates that D.P. resigned effective October 3, 2002, which was the following school year.

Lead teacher Geraldine Amado testified that C.F. was a teacher in her classroom during the 2001-2002 school year. C.F. called in sick frequently, which Amado would have noted in her monthly observations, which she gave to education specialist Janet Brackett every month. Brackett asked Amado about C.F.'s performance and brought up the idea of putting C.F. on probation for some period of time. At the completion of that period of time, C.F., Amado, Brackett, and the education manager met to discuss the necessary improvements in C.F.'s performance and attendance. C.F. was continued on probation for a further period of time and then made permanent.¹³

In December 1999, Amado completed an evaluation of a teacher, "A.C.," in which she checked off "needs improvement" with respect to attendance, punctuality, time management, attitude, and work habits. Amado also checked the box indicating that A.C.'s probationary period was being extended for 90 days. Amado testified that her education specialist, Sherry Caron, initiated the decision to extend A.C.'s probationary period due to an attendance problem and that the decision to extend A.C.'s probationary period came about from a meeting between Amado, Caron, an education manager, and Sullivan, in which it was the consensus that A.C.'s probationary period should be extended. Thereafter, there was a meeting with A.C., which Amado did not attend.

Lead teacher Adriana Valenzuela testified that she once completed an evaluation form for a teacher who was completing her 90-day probationary period and who was excessively absent. When Valenzuela filled out the evaluation form, she went to discuss it with her education specialist, Barbara Hughes, who said she was going to inquire of education manager Mary Pichi about extending the employee's probationary period. Hughes then told Valenzuela that Self Help was, indeed, going to extend the teacher's probationary period. Hughes then met with the employee to inform her of this.

Valenzuela also testified that one year she reported observations about absenteeism by teacher "L.J." in her monthly goals for October and December.¹⁴ In L.J.'s end-of-year evaluation, Valenzuela indicated "needs improvement" for attendance and wrote a comment about it. Neither Valenzuela's education specialist nor anyone else asked Valenzuela for a recommendation as to whether L.J. should be disciplined for poor

¹³ Self Help submitted into evidence two evaluations of C.F. In December 2001, Amado completed an evaluation of C.F. in which she checked off "needs improvement" for attendance, quality of work, and work habits, and she indicated that C.F.'s probationary period was extended to January 3, 2002. Amado testified that she checked the box for extended probation to convey what had been discussed with Brackett and that lead teachers cannot make the decision to extend a probationary period. Six weeks later, on January 3, 2002, Amado completed another evaluation of C.F. in which she checked the box for permanent status. Amado testified that the decision to make C.F. permanent was the result of the meetings between C.F., Amado, the education specialist, and the education manager.

¹⁴ After the first observation, L.J. wrote a statement for the education specialist explaining why her absences were excusable. After the second observation, L.J. met with the education specialist about the matter and also requested a meeting with the education manager, who agreed to meet with her. L.J. went out on medical leave before the meeting occurred.

attendance. In fact, L.J. told Valenzuela subsequently that education manager Mary Pichi had suggested that she apply for an education specialist position at Self Help.¹⁵

Lead teachers Amado, Rybak, and Valenzuela testified that they have never been asked to give a recommendation regarding a disciplinary consequence for any notations they have made in completing evaluation forms.

Sullivan testified that when teachers apply for lead teacher positions, the rating on their annual evaluation as a teacher is one of many factors considered in the decision to promote them. When there is an opening for a lead teacher, a group composed of an education manager, education specialist and, sometimes, a lead teacher interviews the candidates and makes a recommendation to the Head Start director. In making a recommendation, the group considers the interview, a writing sample, educational background, annual evaluations if the candidate is internal, and references if the candidate is not. A teacher with a high score on her evaluation but an inadequate educational background may not be promoted to lead teacher. Sullivan gave no examples of teachers who were promoted to a lead teacher position on the basis of their evaluations.¹⁶

It appears that on one occasion an evaluation completed by a lead teacher played a role in the transfer of a teacher to another classroom. Lead teacher Adriana Valenzuela testified that at one time she worked with a teacher whose primary language was Spanish, so that she was unable to perform her duties in a classroom of primarily English-speaking children. Valenzuela completed evaluations of this teacher noting that she was unable to communicate effectively.¹⁷ She did not make any recommendation regarding a solution. Valenzuela gave the evaluations to her education specialist, who confirmed that she had also witnessed this teacher struggling. The education specialist took the matter to her education manager, and the teacher was transferred to a Spanish-speaking classroom.

There is no relationship between the teachers' scores on their evaluations and their compensation. All Self Help employees receive cost-of-living increases set by the federal government and do not receive merit pay increases.

Two head cooks in the Head Start program, who are in the petitioned-for unit, use the same annual evaluation form to complete evaluations of the second cook, food service

¹⁵ Oddly, Valenzuela testified that she sent L.J. to the interview with a letter of recommendation, explaining that her attendance problem did not mean she was ineffective and that she wrote about L.J.'s strengths.

¹⁶ As noted above, lead teacher Adriana Valenzuela testified that she provided a letter of recommendation to teacher "L.J." when she interviewed for a CRT position, but L.J. was not selected for the position.

¹⁷ It is unclear from the record whether Valenzuela was referring to the monthly logs or the teacher's annual end-of-year evaluation.

workers, and kitchen aides.¹⁸ The head cooks may make recommendations regarding the promotion or discipline of food service employees to the food service supervisor, who would bring such recommendation to the attention of Sullivan, who is the ultimate decision-maker. Sullivan testified that the head cook's recommendations are sometimes followed and sometimes not followed.

Authority to Discipline

Sullivan testified that if a lead teacher observed misconduct by a teacher, such as failing to supervise a child or talking inappropriately to a child, the lead teacher would report such misconduct to her education specialist. The lead teacher would probably not make a recommendation that the misconduct should result in a particular level of discipline. The decision to terminate a teacher or impose any particular disciplinary consequence is left up to the education specialist or higher managers. Only the Head Start director and Self Help executive director may terminate an employee.¹⁹

Teacher Robin French testified that in 2004, her education specialist, Jane Brackett, met with her weekly to ask for feedback on her lead teacher, Mona Bari, with whom the education specialist had issues. In March 2004, French observed Bari release a child to an individual who was not listed on the child's emergency card as a person who had permission to pick up the child. French reported the incident to her education specialist. Bari was immediately terminated.

Authority to Approve Time Off

Sullivan testified that staff requests for vacation must be approved by each employee's immediate supervisor. In the case of teachers, the lead teacher signs the "Request for Leave" form, which must also be signed by Sullivan or by Head Start Director Foley. No request is effective until either Foley or Sullivan sign the form. Self Help submitted into evidence two "Request for Leave" forms submitted by teachers that were signed by lead teachers. One was also signed by Sullivan and one was also signed by Foley. Sullivan testified that a lead teacher may say no, but no lead teacher has ever denied a vacation request. In fact, requests for vacation have rarely been denied.

Lead teacher Amado testified that her teacher mentions to her that she would like to have a day off, but that their education specialist handles the request. She has never approved a request for vacation and does not have that authority. Lead teacher Rybak testified that teachers inform her that they are putting in a request for time off, but do not ask her permission. Teacher French testified that she submits her leave request forms to

¹⁸ They do not employ the logs in which bi-monthly goals are set.

¹⁹ Sullivan testified that in the two instances where D.P. and C.F. were disciplined, the lead teachers would have completed a "staffing" form, i.e., a disciplinary form, but none were submitted into evidence.

her education specialist and informs her lead teacher, as a courtesy, that she will be taking time off.

Sullivan testified that teachers who are ill or unable to come to work call the lead teacher or, if they are unable to reach the lead teacher, the education specialist. Lead teacher Rybak testified that her teacher calls either Rybak or their education specialist when she needs to call in sick. It is the education specialists who are responsible for arranging for float teachers or substitute teachers to cover for absent teachers.

Lead teachers sign the teachers' time cards, and the education specialists check them before they are forwarded to payroll. Rybak testified that she has no authority to ask teachers to stay later than their scheduled shift, and Amado testified that she has no authority to modify a teacher's work schedule for the day.

Secondary Indicia

Lead teachers must have a bachelor's degree when hired. Teachers must have obtained a certification from the Massachusetts Office of Child Care Services (OCCS),²⁰ which requires some course work in child development and a certain amount of time in the classroom.

Both lead teachers and teachers are hourly paid. Lead teachers currently earn between \$14.09 and \$18.96 per hour. Teachers currently earn between \$10.29 and \$17.45 per hour.²¹

Sullivan testified that lead teachers, education specialists, and education managers would be attending "supervision training" on November 1, 2004, although she did not explain what this would entail. Amado testified that, about January 2004, the education manager and education specialists at the Shelton School provided "supervisory training" for the lead teachers at the Shelton School over one or two sessions lasting an hour and one half. They discussed how to complete the logs and goals each month and how to work with the teachers in the classroom. Amado testified that this did not change the way in which she had been completing the logs and evaluation forms for years.

DISCUSSION:

Pursuant to Section 2(11) of the Act, the term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use

²⁰ The OCCS is a state agency that licenses day care centers. Float teachers and some, but not necessarily all, substitute teachers have the OCCS certification.

²¹ Some teachers may earn more than some lead teachers because of their greater longevity.

of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp.²² The status of a supervisor under the Act is determined by an individual's duties, not by his title or job classification. New Fern Restorium Co.²³ The burden of proving supervisory status rests on the party alleging that such status exists. NLRB v. Kentucky River Community Care²⁴ The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co.²⁵

Authority to evaluate

Self Help asserts that the lead teachers are statutory supervisors because, by virtue of the numerical scores they give on the teachers' year-end evaluations, they effectively recommend which teachers will be let go or promoted and which will be subject to an extended probationary period. In this regard, Self Help asserts that teacher D.P. was not recalled after a summer layoff as a result of her lead teacher's assessment of excessive absenteeism, that teacher C.F. was put on probation and subsequently placed on permanent status because of her lead teacher's assessment of her attendance issues, and that teacher A.C. was put on probation because her lead teacher indicated to her superiors that A.C. had an attendance problem.

I find that the lead teachers' role in the evaluation process does not constitute an effective recommendation for personnel action. In order to demonstrate that the lead teachers make effective recommendations, Self Help must show, first, that the lead teachers actually make recommendations for personnel action and, second, that the recommended actions are taken without independent investigation by superiors, not simply that the recommendations are ultimately followed. Children's Farm Home.²⁶

In the case of D.P., there is no evidence that lead teacher Monna Bari even made a recommendation not to recall D.P. because of her attendance problems. Bari did even check the box at the end of the evaluation form for either permanent status or extended probation. Although she mentioned D.P.'s attendance problems in her log, Bari did not give D.P. any rating with respect to attendance on the year-end evaluation form, simply

²² 273 NLRB 1677, 1689 (1985).

²³ 175 NLRB 871 (1969).

²⁴ 532 U.S. 706, 121 S.Ct. 1861, 167 LRRM 2164 (2001).

²⁵ 308 NLRB 101, 102 (1992).

²⁶ 324 NLRB 61 (1997).

leaving that section blank.²⁷ Even assuming Bari had made a recommendation not to recall D.P., there was no testimony by anyone with first-hand knowledge of the basis for the decision not to recall D.P. the following year and whether the decision was made without independent investigation by Bari's superiors.

Nor do Amado's evaluations of C.F. and A.C. demonstrate the supervisory status of the lead teachers. First, Amado testified that her education specialist must approve the evaluations she prepares before she discusses them with the teachers and that the issuance of the evaluations of C.F. and A.C. were preceded by meetings with two to three higher managers who discussed what should happen. Ten Broeck Commons²⁸ (LPNs who complete evaluations are not supervisors, where appraisal are not the sole product of the LPN). Second, while Amado may have brought C.F.'s and A.C.'s attendance problems to the attention of her superiors,²⁹ Amado testified that it was the education specialists in each instance, and not Amado, who proposed to extend the employees' probationary periods. In sum, it appears that Amado's superiors retain the authority to determine and effectuate any personnel actions flowing from the evaluations prepared by the lead teachers. In these circumstances, the Board has declined to find supervisory status. Hillhaven Rehabilitation Center.³⁰

Although Self Help apparently does not rely on the evaluations completed by lead teacher Adriana Valenzuela in asserting that lead teachers are statutory supervisors, I note that the evaluations she completed present a similar pattern. In two instances, Valenzuela reported in an evaluation that a teacher had an attendance problem, but she was not asked for a recommendation as to whether the teacher should be disciplined or what the discipline should be.³¹ In the case of the new teacher with an attendance problem, it was the education specialist and/or education manager who made the determination to extend her probationary period.

²⁷ Although Self Help asserts that a numerical score determines which teachers will be let go and that D.P. was not recalled because of her poor attendance, I note that lead teachers do not assign a numerical score to the criterion of attendance.

²⁸ 320 NLRB 806, 813 (1996).

²⁹ I note that a teacher's attendance problem is a type of disciplinary issue of which the lead teachers' superiors should be independently aware, in that education specialists must find substitutes for absent teachers. Even Sullivan testified that Self Help could discipline employees over an issue such as attendance apart from their evaluations, because it is clear-cut.

³⁰ 325 NLRB 202, 203 (1997).

³¹ In the case of Valenzuela's evaluation of L.J., it appears that the lead teacher's superiors agreed to meet with the teacher regarding her absenteeism and thus conducted an independent investigation of the matter.

Nor does the evidence establish that the lead teachers' evaluations constitute an effective recommendation for promotion or transfer.³² It appears that when teachers apply for a promotion, their evaluations are one of several factors, including an interview by higher managers, a writing sample, and educational background, that are considered. Ten Broeck Commons³³ (charge nurses who complete performance appraisals leading to merit increases are not supervisors, where the merit increases are determined by a combination of factors and not solely on the employee's performance appraisal). Self Help presented no examples of a teacher who was promoted on the basis of her annual evaluation or other recommendation by a lead teacher.³⁴ As for an effective recommendation for transfer, Valenzuela merely reported in a teacher's evaluation that the teacher had a language problem, but did not recommend any solutions to the problem. Her education specialist, who confirmed that she had observed the teacher's language problem herself, took the matter to her education manager, and the teacher was transferred to another classroom. Since Valenzuela made no recommendation at all, and her superior independently investigated the matter, it cannot be said that Valenzuela's evaluation constituted an effective recommendation for transfer.

Finally, Self Help's contention that the lead teachers are statutory supervisors on the basis of these evaluations is undercut by the fact that the two head cooks, whom both parties have agreed to include in the unit, complete the very same evaluation forms.

Other statutory indicia³⁵

The record reveals that lead teachers' authority with respect to discipline, apart from whatever disciplinary consequences may flow from the evaluations they complete, is limited to reporting incidents of misconduct to their superiors.³⁶ Sullivan testified that lead teachers would probably not recommend that misconduct should result in a particular level of discipline, and there are no record examples of lead teachers recommending discipline. Ten Broeck Commons³⁷ (LPNs are not supervisors, where

³² I note that Self Help does not assert in its post-hearing brief that the evaluations constitute an effective recommendation for promotion or transfer.

³³ *Supra* at 813.

³⁴ In fact, lead teacher Valenzuela provided a letter of recommendation to teacher L.J. when she interviewed for a CRT position, but L.J. did not receive the promotion.

³⁵ In its post-hearing brief, Self Help does not contend that lead teachers are statutory supervisors on the basis of any indicia other than their authority to evaluate teachers. Since there is some record evidence regarding other statutory indicia, I shall address it nonetheless.

³⁶ Their role in discipline appears to be not unlike that of the teacher who reported that her lead teacher had impermissibly released a child to an unauthorized individual. This incident resulted in the lead teacher's termination, but it cannot be said that the teacher is a statutory supervisor because of it, where there is no evidence that she recommended the termination.

³⁷ *Supra* at 812.

their role in discipline is merely to report incidents of unacceptable work performance or behavior and they make no recommendations with respect to discipline).

The lead teachers' role in approving time off does not confer supervisory status, where the "Request for Leave" forms they sign must always be countersigned by Sullivan or the Head Start director before the approval is effective. Esco Corp.³⁸ (individual is not a supervisor where his decisions to grant time off are subject to management oversight, if not approval). Further, because no lead teacher has ever denied a teacher's vacation request, their role in approving time off appears to be ministerial. L. Suzio Concrete Co.³⁹ (discretion that alleged supervisor exercised in granting time off was merely routine and clerical, where he granted his approval in most cases).

The fact that teachers notify their lead teachers when they are ill or otherwise unable to come in to work does not demonstrate the lead teacher's supervisory status, where there is no evidence that the lead teachers have authority to or have ever disapproved a teacher's request for a sick day. Signing the teachers' time cards is a clerical function that the Board has held does not confer supervisory status. Tree-Free Fiber Co.;⁴⁰ Adco Electric, Inc.⁴¹

Finally, the record regarding the lead teachers' role in directing the teachers was not sufficiently developed to find that they are statutory supervisors on that basis. North Shore Weeklies, Inc.⁴² (no showing that press supervisors are required to use independent judgment in directing the work of their crews, where the record does not reveal the particular acts and judgments that make up their direction of work). I also note that the lead teachers are provided with detailed guidelines from the Head Start program that circumscribe their role in running their classrooms and directing their teachers. Dynamic Science, Inc.⁴³

Secondary indicia

Self Help's assertion that the lead teachers are statutory supervisors is not supported by the secondary indicia of supervisory status. Both lead teachers and teachers are hourly paid. There is not a substantial difference in the hourly rates of the two positions, and, in fact, it appears that there are some teachers are paid at a higher hourly

³⁸ 298 NLRB 837, 839 (1990).

³⁹ 325 NLRB 392, 397-398 (1998).

⁴⁰ 328 NLRB 389, 392 (1999).

⁴¹ 307 NLRB 1113, ALJD at 1126 (1992).

⁴² 317 NLRB 1128 (1995).

⁴³ 334 NLRB 391 (2001).

rate than lead teachers, because of their longer tenure. “Supervisory training” for the lead teachers is not evidence of their supervisory status. The only evidence as to the topics reviewed in the supervisory training is that, in the past, lead teachers have been trained in the completion of the logs and evaluation forms, a duty which I have already determined does not confer supervisory status.

While lead teachers are required to have a college degree that is not required of the teachers, that is merely a secondary indicium that is insufficient to establish supervisory status in the absence of evidence that the lead teachers possess any of the primary indicia of supervisory authority enumerated in Section 2(11) of the Act. Ken-Crest Services.⁴⁴

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time lead teachers and lead teacher substitutes, teachers and teacher substitutes, float teachers, bus drivers and bus driver substitutes, van drivers and van driver substitutes, bus monitors and bus monitor substitutes, family advocates and family advocate substitutes, behavioral specialists and behavioral specialist substitutes, head cooks, second cooks, food service workers, kitchen aides, food service van drivers and their substitutes, receptionists, data entry/receptionist, data processing/office assistants, health specialists, transportation assistants, nutrition specialists, transition literacy specialists, and maintenance workers employed by the Employer in its Head Start and child care programs at its facilities at 370 Howard Street, Brockton, Massachusetts, 311 Quincy Street, Brockton, Massachusetts, Norton, Massachusetts, Bridgewater, Massachusetts, Attleboro, Massachusetts, Norwood, Massachusetts, Whitman, Massachusetts, Middleboro, Massachusetts, Rockland, Massachusetts, and Stoughton, Massachusetts, but excluding confidential employees, managers, and guards and supervisors.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have

⁴⁴ 335 NLRB 777, 779 (2001).

not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by Service Employees International Union, Local 888, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc.;⁴⁵ NLRB v. Wyman-Gordon Co.⁴⁶ Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. North Macon Health Care Facility.⁴⁷ In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before November 19, 2004. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

⁴⁵ 156 NLRB 1236 (1966).

⁴⁶ 394 U.S. 759 (1969).

⁴⁷ 315 NLRB 359 (1994).

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by November 26, 2004.

/s/ Ronald S. Cohen
Ronald S. Cohen
Acting Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 12th day of November 2004.

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